Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte LIBERTY R. WORTH

Appeal No. 2004-0749
Application No. 09/891,746

ON BRIEF

Before ABRAMS, STAAB, and NASE, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 11 to 17, 19 to 25 and 27, which are all of the claims pending in this application.[1]

We REVERSE.

[1] Claims 11, 13, 15 to 17, 19, 21 and 23 to 25 were amended subsequent to the final rejection.

BACKGROUND

The appellant's invention relates to a system and method for the evaluation of pattern arrangements. More particularly, the invention is directed to a display system, method and product for presenting and manipulating a plurality of substantially discrete simulated elements incorporating patterns corresponding to patterns to be used on carpeting or other floor covering or surface covering elements. The discrete simulated elements may be manipulated independently of one another to simulate various surface designs and arrangements of potential interest, for example, prior to actual purchase or installation of the floor covering. The discrete simulated elements are held in place relative to one another across a support surface in a substantially releasable manner so as to promote relatively easy manual manipulation and rearrangement by a user of the system (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Howard	3,530,984	Sept. 29, 1970
Barlett	5,505,620	April 9, 1996

The following three rejections are before us in this appeal:

(1) Claims 11, 12, 15, 17, 19, 20, 23, 25 and 27 under 35 U.S.C. § 102(b) as being anticipated by Barlett;

(2) Claims 13, 14, 21 and 22 under 35 U.S.C. § 103 as being unpatentable over Barlett in view of Howard; and

(3) Claims 8, 16 and 24 under 35 U.S.C. § 103 as being unpatentable over Barlett.[2]

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 14, mailed August 12, 2003) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 12, filed May 29, 2003) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

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[2] In the answer, the examiner inadvertently omitted claim 27 from the 35 U.S.C. § 102(b) rejection based on Barlett and omitted claim 8 from the 35 U.S.C. § 103 rejection based on Barlett.

The anticipation rejection

We will not sustain the rejection of claims 11, 12, 15, 17, 19, 20, 23, 25 and 27 under 35 U.S.C. § 102(b).

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Claims 11, 19 and 27, the only independent claims under appeal, read as follows:

> 11. A display system for simulated presentation of a plurality of alternative arrangements of prospective floor covering elements across a flooring support surface, the display system comprising:
>
> a support element including a substantially planar display face; and
>
> a plurality of independently manually manipulatable simulated elements, wherein each of said simulated elements have a rectangular shape substantially

corresponding to the shape of the prospective floor covering elements and wherein said simulated elements further include a show surface including a surface design pattern comprising a reduced reproduction of a surface design pattern of at least one prospective floor covering element, said simulated elements being releasably attachable across the display face of the support element with the show surface facing away from the display face of the support element such that said simulated elements are independently manipulatable, rotatable, and arrangeable in a manually manipulatable abutting array across the display face to simulate a first prospective arrangement of the prospective floor covering elements and such that said manually manipulatable array is alterable by means of manually rearranging at least one of the manually manipulatable elements to simulate at least a second prospective arrangement of the prospective floor covering elements, wherein said simulated elements comprise printed segments of a printable magnetic sheet material.

19. A display system for the simulated presentation of a plurality of alternative arrangements of prospective floor covering tile elements across a flooring support surface, the display system comprising:

a support element including a substantially planar display face; and

a plurality of independently manually manipulatable simulated tile elements comprising printed reduced dimension reproductions of the prospective floor covering tile elements, wherein said simulated tile elements have a rectangular shape substantially corresponding to the shape of the prospective floor covering tile elements and wherein said simulated tile elements further include a show surface including a surface design pattern comprising a substantially complete reduced reproduction of a surface design pattern of at least one prospective floor covering tile element, said simulated tile elements being releasably attachable across the display face of the support element with the show surface facing away from the display face of the support element such that said simulated tile elements are independently manipulatable, rotatable, and arrangeable in a manually manipulatable abutting array across the display face to simulate a first prospective arrangement of the prospective floor covering tile elements across a flooring surface and such that said manually manipulatable array is alterable by manually rearranging at least one of the simulated tile elements to simulate at least a second prospective arrangement of the prospective floor covering tile elements across a flooring surface, and wherein the attachment force between the display face and the simulated tile elements is sufficient to maintain the relative position of the simulated tile elements within the manually manipulatable array across the display face when the display face is

disposed in a substantially vertical position, wherein said simulated tile elements comprise printed segments of a printable magnetic sheet material.

27. A method for simulating at least one prospective arrangement of floor covering tile elements across a flooring support surface, comprising:

applying a plurality of independently manually manipulatable simulated tile elements across a substantially planar display face in an array substantially corresponding to the prospective arrangement of floor covering tile elements across a flooring support surface, wherein said simulated tile elements are rectangular and substantially magnetic in character and include a show surface including a surface design pattern corresponding to a surface design pattern of a prospective floor covering tile element within said prospective arrangement of floor covering tile elements across a flooring support surface, said simulated tile elements being independently releasably attachable, manipulatable and rotatable across the display face by means of magnetic attraction between the simulated tile elements and the display face with the show surface facing away from the display face such that said simulated tile elements are normally held in place relative to one another across the display face but are removable and adjustable by manual manipulation such that said array is alterable to simulate one or more alternative abutting arrangements of floor covering tile elements.

Barlett's invention is concerned with improvements in or relating to planning and toy assemblies, and the like, employing movable elements made from sheet permanent magnet material. The planning assembly illustrated in Figures 1-5 is intended for the planning of the layout of office furniture. Barlett teaches (column 4, lines 51-57) that "the fundamental structure involved is applicable to other planning assemblies, such as for kitchens, bathrooms, living accommodations, architectural layouts and landscaping, or to like structures such as annunciators requiring selectable movable information elements, or to toys employing selectable movable decorative and information elements."

Barlett's planning assembly has the form of a folder of convenient standard size when the leaves thereof are fully folded together. The assembly comprises a removable element receiving member 11, in commercial terms frequently referred to as a graph board or layout board, which for clarity of illustration is shown in outline only in Figures 1 and 2, is not shown in Figure 3, and is shown in more detail in Figures 4 and 5, the member providing an element receiving surface 12, upon which planning elements 14A, 14B and 14C (decorative and/or information elements in the case of other embodiments) are placed and magnetically adhered thereto. Figure 1 shows a block of elements 14 shaded to represent the color green, while a corresponding block of elements 14' are shaded to represent the color brown. As shown in Figures 4 and 5, member 11 comprises two equal-size leaves which are hinged together along their butting longer edges, so that they can be folded together, as illustrated, one on top of the other for storage, the leaves being opened to be coplanar for use. Each leaf comprises a support sheet 16 to the upper surface of which is secured, as by an adhesive or by double-sided adhesive tape, a thin sheet 18 of what is referred to herein as magnetizable metal, namely any metal or metal alloy that will cooperate with a permanent magnet of suitable strength to retain the magnet against movement thereon, even through an intervening thin sheet of non-magnetizable material. The support and metal sheets are sandwiched between a surface sheet 20 mounted

over the metal sheet, and a closure sheet 22 covering the surface of the support sheet not having a metal sheet thereon, both of which are of a self-adhesive, non-magnetizable material, such as paper or a PVC coated on one side with a pressure-sensitive adhesive. The surface sheet 20 is folded over the edges of the support and metal sheets and has border portions extending partway over the back of the support sheet, while the closure sheet 22 overlies the border portions to form a complete enclosure. The exposed surface 24 of each sheet 20 is provided with a printed representation facilitating the location of elements placed thereon, and in this embodiment, in that it is a planning assembly, this consists of a square grid pattern of suitable cell size.

Barlett's elements 14 are made from permanent magnet sheet material, and a wide variety of shapes are provided, for example, worksurfaces of different shapes and sizes, file cabinets, seats, and tables. For ease of identification each element 14 is provided on its outer surface with a visual representation, consisting of a graphic depiction of the furniture item which it represents, together with figures at its edges indicating its dimensions, and each such depiction has what for convenience is referred to herein as its respective visual orientation, so that the user is comfortable in placing the elements on the planning surface as the corresponding piece of furniture would be seen to be disposed in the office; the user is thus provided with an accurate picture of

the resultant layout. The elements 14 frequently are also provided with printed identifications, and are placed on the storage members in a visual orientation such that the printing can easily be read.

Claims 11, 19 and 27 are not anticipated by Barlett for the reasons set forth by the appellant in the brief (pp. 3-4). Specifically, Barlett's planning elements 14 are not (1) simulated elements having a show surface including a surface design pattern comprising a reduced reproduction of a surface design pattern of at least one prospective floor covering element as set forth in claim 11; (2) simulated tile elements comprising printed reduced dimension reproductions of the prospective floor covering tile elements, wherein said simulated tile elements further include a show surface including a surface design pattern comprising a substantially complete reduced reproduction of a surface design pattern of at least one prospective floor covering tile element as set forth in claim 19; and (3) simulated tile elements having a show surface including a surface design pattern corresponding to a surface design pattern of a prospective floor covering tile element as recited in claim 27. In that regard, we note that Barlett teaches the manipulation of simulated furniture elements, not the manipulation of simulated floor covering tile elements as set forth in the claims under appeal.

Since all the limitations of claims 11, 19 and 27 are not disclosed in Barlett for the reasons set forth above, the decision of the examiner to reject independent claims 11, 19 and 27, and claims 12, 15, 17, 20, 23 and 25 dependent thereon, under 35 U.S.C. § 102(b) is reversed.

The obviousness rejections

We have also reviewed the reference to Howard but find nothing therein which makes up for the deficiencies of Barlett discussed above. Thus, the examiner has not established that the claimed subject matter, as a whole, would have been obvious at the time the invention was made to a person of ordinary skill in the art. Accordingly, the decision of the examiner to reject claims 8, 13, 14, 16, 21, 22 and 24 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 11, 12, 15, 17, 19, 20, 23, 25 and 27 under 35 U.S.C. § 102(b) is reversed and the decision of the

examiner to reject claims 8, 13, 14, 16, 21, 22 and 24 under 35 U.S.C. § 103 is reversed.

REVERSED

NEAL E. ABRAMS Administrative Patent Judge	)	
LAWRENCE J. STAAB Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	)	

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